

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

FILED

JUL 07 2010

SECRETARY, BOARD OF
OIL, GAS & MINING

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IN THE MATTER OF FORMAL
RULEMAKING TO REPEAL THE
OIL AND GAS RULE R649-4:
DETERMINATION OF WELL
CATEGORIES UNDER THE NGPA
OF 1978

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:
:

DIVISION'S REQUEST TO
COMMENCE FORMAL
RULEMAKING

DOCKET NO. 2010-023
CAUSE NO. RO&G-2010-02

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The Division of Oil, Gas & Mining ("Division") hereby requests that the Board of Oil, Gas & Mining ("Board") commence formal rulemaking to repeal R649-4, Determination of Well Categories under the Natural Gas Policy Act of 1978. The Division hereby requests that the Board at its regularly scheduled hearing on August 25, 2010 take formal action to: file the proposed repeal attached to this Request in accordance with the requirements of the Utah Administrative Rulemaking Act, Utah Code §§63G-3-101 et seq. (2009); schedule a public hearing; and after allowing for comments and an opportunity for hearing and consideration of all comments, take action as required to formally repeal R649-4.

BACKGROUND

Oil and Gas Rule R649-4 is due for five year review in 2010 in accordance with Utah Code §§63G-3-305, with renewal or repeal required by November 8, 2010. For the reasons identified subsequently in the petition, R649-4 is no longer necessary, and therefore can be repealed from the Utah Administrative Code.

R649-4 was adopted as a rule by the Board due to Section 503 of the Natural Gas Policy Act of 1978 (NGPA) which granted state oil and gas boards the authority to make well category determinations on state and fee minerals. The NGPA included incentive price ceilings for tight formation gas to encourage more development of the nation's natural gas resources. The Board

approved 575 cause numbers under R649-4 through March 1994, the rule was repealed in October 1994, and reinstated at a Board hearing in December 2000 since FERC requested states to open a window for additional applications for well category determinations. The Board approved only one additional filing in January 2003.

The Division briefed the Board on the repeal of R649-4 on June 23, 2010, subsequent to the Division's letter to the Board dated May 4, 2010. Copies of the May 4, 2010 letter were provided to representatives of the Utah Petroleum Association and the Independent Petroleum Association of Mountain States on May 6, 2010 for any comments, and no opposition to the repeal was received. In addition, no parties spoke in opposition to the proposed repeal of R649-4 at the public briefing to the Board on June 23, 2010.

R649-4 should be repealed since over seven years have passed since the last well category determination, and the Federal Energy Regulatory Commission has discontinued accepting dockets for well category determinations. In addition, the oil and gas rules for the nearby states of New Mexico, Colorado, Wyoming, Montana, and North Dakota were searched and they no longer contain such rule. R649-4 is no longer necessary as a state rule.

Attached is the proposed repeal document for R649-4, dated June 30, 2010. If the Board decides to commence formal rulemaking, the proposed repeal will be filed with the Division of Administrative Rules via an eRules filing. Provided the eRules filing can be completed by September 1, 2010 as expected, the proposed rule repeal will appear in the Utah State Bulletin on September 15, 2010. The Board may take public comment at a Board hearing on the proposed repeal after publication in the Utah State Bulletin. A public hearing may be held as part of the regularly scheduled Board hearing on September 22, 2010.

A minimum 30-day comment period extending through October 15, 2010 is required by the Utah Administrative Rulemaking Act. Assuming no change to the plan for rule repeal, the Board could grant its final approval of the repeal at the regular hearing day on October 27, 2010 and the repeal could be made effective on the day of the October Board Hearing, since it would meet the requirement of no fewer than seven calendar days after the close of the public comment period.

REQUESTED ACTION

The Division requests that the Board take the following actions to commence the formal repeal of R649-4: order the division to file the proposed rule repeal with the Division of Administrative Rules; set a date for a public hearing; and after allowing the necessary time for public comment and consideration of comments, take necessary action to formally adopt the rule repeal as shown on the attached exhibit.

DATED this 7th day of July, 2010.



Steve Alder,
Assistant Attorney General
For Utah Division of Oil, Gas, & Mining.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing DIVISION'S REQUEST TO COMMENCE FORMAL RULEMAKING for Docket No. 2010-023, Cause No. RO&G-2010-02 to be mailed with postage prepaid, this 8 day of July, 2010, to the following:

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Utah Division of Oil, Gas & Mining
Rulemaking Process: Commence Formal
Oil & Gas Program: Repeal of R649-4
June 30, 2010

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

~~[R649-4. Determination of Well Categories Under the Natural Gas Policy Act of 1978.]~~

~~R649-4-1. Definitions.~~

~~1. Unless the context specifically requires otherwise, any special words, terms, or phrases used in the Section and not defined in Section 1 have the meanings defined under the Natural Gas Policy Act of 1978 (NGPA), and applicable Federal Energy Regulatory Commission (FERC) rules and regulations.~~

~~R649-4-2. Applications.~~

~~An operator requesting the classification of a well or reservoir pursuant to the authority granted to the Board by Section 503 of the NGPA, in order to enable the Board to determine the applicable category for any such well or reservoir pursuant to Title 1 of the NGPA, shall:~~

~~1. File the original and two copies of a written application made upon forms prescribed by the Board together with supporting documentation, including all information, data, forms, plats, maps, exhibits, and evidence as may be required by the applicable statutes, rules, and regulations. An application may be amended, supplemented, or withdrawn by the applicant at any time prior to the Board determination.~~

~~1.1. Complete an individual application as to each well for which a status determination is being requested. If more than one status determination is being requested for a single well, all forms and information required for each requested determination shall be submitted jointly under one application, with notice to the Board that multiple determinations for one well are being sought under the application.~~

~~1.2. File an affidavit as to the truthfulness and correctness of all information contained in the application, including all documents, testimony, and evidence attached to or submitted with the application.~~

~~1.3. Certify that the purchaser and owners of the natural gas for which the determination is being submitted, have been served by personal delivery or by mail, postage prepaid, with a copy of the application, including a complete FERC Form 121, excluding required supporting documents.~~

~~R649-4-3. Notice and Hearing.~~

~~1. Upon receipt of an application for a well status determination under the NGPA, the Board shall:~~

~~1.1. Notify the applicant of the receipt of the application;~~

~~1.2. Determine the completeness of the application. If the application is incomplete in any respect, the Board shall indicate to the applicant the items to be filed which would make the application complete;~~

~~1.3. Assign a cause number to each application, determine a hearing date for each complete application, and notify the applicant of the cause number and hearing date.~~

~~1.4. Cause notice of hearing to be given.~~

~~2. If the same applicant has filed for multiple well determinations or for multiple determinations as to any well, the published notice of hearing may include more than one well or reservoir in one notice.~~

~~R649-4-4. Determination and Orders.~~

~~1. Following notice and hearing, the Board shall issue a determination and order for each complete application.~~

~~2. If no response or protest to the application is filed with the Board, an application may be considered and a determination may be made by the Director or a designated hearing examiner on the basis of sworn testimony, depositions, or affidavits, together with all exhibits, forms, and other matters properly filed with the Board. Such matters shall comprise the transcript of the hearing on which the determination is based.~~

~~3. An applicant may also request consideration and a determination by the Director or a designated hearing examiner by filing a letter with the Board agreeing that the determination can be made by the Director without the necessity of an appearance by the applicant. The Board may, however, upon its own motion, require an evidentiary hearing with sworn testimony to be held upon any application following proper notice. In the event the Board determines that a hearing is required, the Board shall notify the applicant at least ten days prior to the scheduled hearing date.~~

~~R649-4-5. Notice of Determination.~~

~~Within five days after the last day for filing a motion for rehearing, or, if such a motion is filed, within 15 days after it is denied or overruled by operation of law, the Board shall give written notice to the FERC of its determination and order.~~

~~KEY: oil and gas law~~

~~Date of Enactment or Last Substantive Amendment: January 3, 2001~~

~~Notice of Continuation: November 8, 2005~~

~~Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.]~~